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File No.

O. Enemy Foreigners/41

Legal DEPARTMENT

A BRANCH

Subject:—

Opinions under the Regulation for the maintenance of Discipline among enemy internees 1939

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MHR.

Submitted.

In this case the R. L. A. is requested to advise on the two questions raised by the D. M. Ahmednagar in his letters at pp. 65 and 68 ante:

(1) Whether an enemy internee who has been convicted and sentenced by a D. M. under Regulation 15 read with Regulation 6 of the regulations for the Maintenance of Discipline among Enemy Internees, 1939, for an internment camp offence has a right of appeal, and

(2) Whether such a convicted internee is to undergo his imprisonment in a criminal jail or in military custody.

2. Under Regulation 6 of the Regulations for the Maintenance of Discipline among Enemy Internees, 1939, framed by the Commander-in-Chief in India, if an enemy internee is found by the Commandant of the internment camp to have committed an internment camp offence for which he cannot be adequately punished by him, he can forward the internee for trial to the Court of a Magistrate of the I Class having jurisdiction. Regulation 11 prescribes the procedure to be followed when an internee has been forwarded to a Magistrate. Under Regulation 15 if he is convicted, such an internee shall be punishable with imprisonment for a term which may extend to one year. Regulations 11 and 16 prescribe certain provisions notwithstanding anything contained in the Criminal Procedure Code, 1898. This would suggest that when an internee has been forwarded for trial to a I Class Magistrate all the provisions of the Code (unless otherwise excepted by the Regulations) come into play. This is also the view of the Government of India (vide para. 2 of the G. of I H. D., letter No. 34/105/40 (Political) at p. 49 ante). Section 408 of the Cr. P. C. provides inter alia that any person convicted on a trial held by a District Magistrate or other Magistrate of the first class, may appeal

to the Court of Session. The answer to the first question appears therefore, to be in the affirmative. The view expressed by the D. M. Ahmednagar, in this respect at p. 68 ante is correct

3. The next question is where such a convicted enemy internee is to undergo the imprisonment. Under sec. 383 of the Code when an accused is sentenced to imprisonment, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined. A jail ordinarily means a prison. But sec. 541 of the Code empowers the Provincial Govt. to direct in what place any person liable to be imprisoned shall be confined. It appears that under this section the jails at Poona, Yeravda, Ahmedabad, Surat Satara and Karwar have been declared to be such places (vide Sohoni's Cr. Pro. Code, commentary under sec. 541). It would not, therefore, be legal to forward the convicted internees to military custody. They will have to be sent to one of the above jails. The Provincial Govt. has power, however, to direct where such internees should be confined.

sd/-.
12/2/41.

AS

MRR.

I agree.

The questions raised for consideration of the R. L. A. are stated in para. 1 of ~~the~~ Mr. Deshmukh's Note.

2. Question No.1. - Sec. 5(2) of the Criminal Procedure Code provides that all offences under any other law shall be investigated, inquired into, tried and ~~sx~~ otherwise dealt ~~x~~ with according to the same provision, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offence. It follows, therefore, that where a special law has provided a special procedure for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail, and no provisions of the Criminal Procedure Code can apply; but where however the special Act is silent the Criminal Procedure Code would be applicable (sec 31 Bom. 438). There is no provision in the Regulations for the Maintenance of ~~xxx~~ Discipline among Enemy Internees, 1939, providing either for any special tribunal of appeal or prohibiting altogether an appeal against the congiction of an enemy internee by a criminal court for an internment camp offence. Consequently sec. 408, Cr. P. C. will apply and the convicted enemy internee will have a right of appeal to the Court of Session.

3. Question No. 2:- Regulations. 15 provides that an internee convicted by a criminal court of an internment offence shall be ~~punx~~ punishable with imprisonment for a term which may extend to one year etc. There is no provision in these regulations as to where such a convict should undergo the period of his imprisonment. Consequently the provisions contained in the Criminal Procedure Code in this respect will apply. Under sec. 388 of of that Code

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the court passing the sentence of imprisonment shall forward a warrant to the jail in which he is to be confined. "Prison" as defined in sec. 2(b) of the Prisoners Act, 1900 includes any place which has been declared by the Provl. Govt. by general or special order, to be a subsidiary jail. A warrant under sec. 383, Cr. P. C. is to be addressed to the officer in charge of a prison for its execution (see sec. 3 of the Prisoners Act) It is therefore clear that a convicted internee will have to undergo his imprisonment in an ordinary (i.e. non-military) jail.

The presumptions made by the District Magistrate in his letters at pp. 65 and 67 on both questions is correct.

RTK 13/2 I agree.

ALR. " seen and returned.
2. The view taken in para 2 of the P. & S. D. note at pp. 69-70 ante is correct."

sd/-
14/2/41.

I agree
sd/-
R. L. A. 14/2

U. R. to P & S. D. No. 81 confl. dated 18th Feb., 1941.

MRR.